

Docket No.: 5000-0103PUS1  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Wolfgang VON DEYN et al.

Application No.: 09/091,300

Confirmation No.: 4798

Filed: June 16, 1998

Art Unit: 1626

For: 3-HETEROCYCLYL-SUBSTITUTED  
BENZOYL DERIVATIVES

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Examiner: R. Gerstl

**LETTER SUGGESTING INTERFERENCE UNDER 37 CFR 41.202**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 CFR 41.202, Applicant hereby suggests Interference between the above-identified application and U.S. Patent No. 6,147,031 (hereinafter "Adachi '031").

**Earlier Petition and Decision Granting Petition**

A review of the reconstructed prosecution history record of the present application shows that Applicant filed a Request that Office Withdraw Application from Issue Pursuant to 37 CFR 1.313 (b) on May 11, 2001. This Request specifically indicated that, although the Issue Fee had already been paid, the present application should be withdrawn from issue because of a potential Interference with the Adachi '031 Patent under 37 CFR 1.313(b)(4). The USPTO issued a Decision on May 14, 2001 stating that the Request was granted and indicating that the Request was "...construed as a petition under 37 CFR 1.313(c)(2)." Thus, the Request for Continued Examination (RCE) was accepted by the USPTO.

Shortly after the above-noted decision issued, the present application was declared “lost” in the USPTO. On January 11, 2008, Applicant filed a Letter Submitting Correspondence Record in Response to Notice under 37 CFR 1.251. This allowed for reconstruction of the prosecution record of the present application which is evident from a review of this application at the USPTO website on “PAIR”.

*Present Suggestion of Interference under 37 CFR 41.202(a)*

Pursuant to 37 CFR 41.202(a), the following information is provided in order to satisfy the requirements of 37 CFR 41.202(a)(1)-(6).

*Identification of Interfering Patent*

Pursuant to 37 CFR 41.202(a)(1), Applicant submits that the claims of the present application significantly overlap with the claims of the above-identified Adachi '031 patent (copy enclosed). Adachi '031 granted on November 14, 2000. A review of the prosecution history record thereof indicates that the present application, despite having a significantly earlier priority date, was not considered in connection with the patentability of the claims of Adachi '031. It is additionally noted that Adachi '031 includes claims 1-3. Claim 1 is directed to compounds falling within formula I. Claim 2 is directed to a herbicide containing one or more compounds of formula I. Claim 3 is directed to intermediate compounds of formula I.

*Identification of Interfering Claims*

Pursuant to 37 CFR 41.202(a)(2) it is submitted that pending claims 18, 20, 21, 23, 28-31 and 34-52 of the present application interfere with one or more of claims 1-3 of Adachi '031 based on the two proposed Counts indicated immediately below.

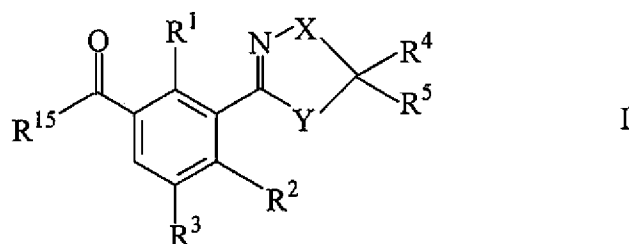
*Proposed “Count A” and “Count B”*

Applicant proposes the following two Counts: Count A directed to final product compounds and herbicidal compositions containing such compounds; and Count B directed to intermediate compounds used to make the final product compounds. Count A constitutes presently pending

claims 28, 21, 50 and 51 of the present application in combination with claims 1 and 2 of Adachi '031. Count B constitutes claims 18 and 52 of the present application in combination with claim 3 of Adachi '031.

**Count A**

A 3-heterocyclyl-substituted benzoyl compound of the formula I,



wherein

X is O;

R<sup>1</sup> is C<sub>1</sub>-C<sub>2</sub>-alkyl, methoxy or methylsulfonyl;

R<sup>2</sup> is nitro, halogen, C<sub>1</sub>-C<sub>6</sub>-alkyl, C<sub>1</sub>-C<sub>6</sub>-haloalkyl, C<sub>1</sub>-C<sub>6</sub>-alkylthio, C<sub>1</sub>-C<sub>6</sub>-alkylsulfinyl, C<sub>1</sub>-C<sub>6</sub>-alkylsulfonyl or C<sub>1</sub>-C<sub>6</sub>-haloalkylsulfonyl;

R<sup>3</sup> is hydrogen, halogen or C<sub>1</sub>-C<sub>6</sub>-alkyl;

R<sup>4</sup> is hydrogen or methyl, and R<sup>5</sup> is hydrogen;

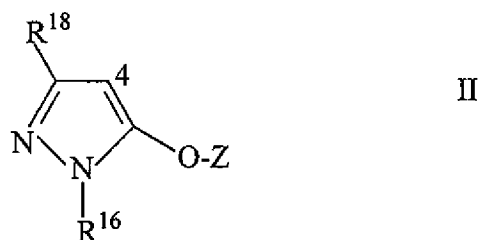
Y is CR<sup>13</sup>R<sup>14</sup>;

R<sup>13</sup>, R<sup>14</sup> are hydrogen, C<sub>1</sub>-C<sub>4</sub>-alkyl, C<sub>1</sub>-C<sub>4</sub>-haloalkyl, C<sub>1</sub>-C<sub>4</sub>-alkoxycarbonyl, C<sub>1</sub>-C<sub>4</sub>-haloalkoxycarbonyl or CONR<sup>7</sup>R<sup>8</sup>;

R<sup>7</sup> is hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;

R<sup>8</sup> is C<sub>1</sub>-C<sub>4</sub>-alkyl;

R<sup>15</sup> is a pyrazole of the formula II which is linked in the 4-position



wherein

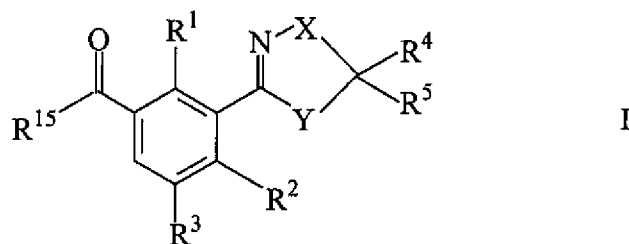
$R^{16}$  is  $C_1$ - $C_6$ -alkyl;

Z is H; and

$R^{18}$  is hydrogen or methyl; or

a composition comprising a herbicidally active amount of at least one 3-heterocyclyl-substituted benzoyl compound of the formula I or of the agriculturally useful salt of I defined above, and auxiliaries conventionally used for the formulation of crop protection products; or

a compound represented by formula I



wherein

$R^1$  is  $C_1$ - $C_6$ -alkyl;

$R^2$  is  $C_1$ - $C_6$ -alkylthio or  $C_1$ - $C_6$ -alkylsulfonyl;

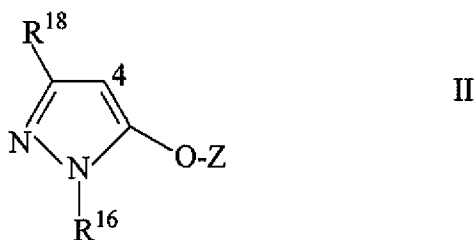
$R^3$  is hydrogen

$R^4$  and  $R^5$  are hydrogen or  $C_1$ - $C_4$ -alkyl;

X is oxygen;

Y is  $CR^{10}R^{11}$ , wherein  $R^{10}$  and  $R^{11}$  are hydrogen or  $C_1$ - $C_4$ -alkyl;

$R^{15}$  is a pyrazole of formula II



which is linked in the 4-position, wherein

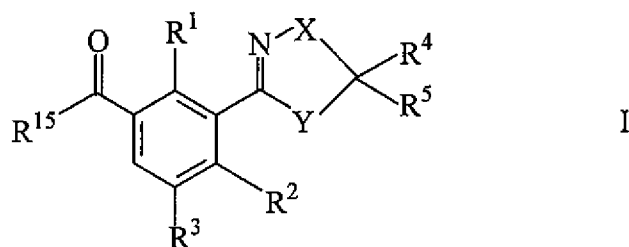
$R^{16}$  is  $C_1$ - $C_6$ -alkyl;

Z is hydrogen or  $SO_2R^{17}$ , wherein

$R^{17}$  is phenyl or phenyl which is partially or fully halogenated and/or has attached to it one to three of the following groups:  $C_1$ - $C_4$ -alkyl and  $C_1$ - $C_4$ -alkoxy; and

$R^{18}$  is hydrogen or  $C_1$ - $C_6$ -alkyl; or

a herbicide characterized by containing one or more compounds represented by formula I



wherein

$R^1$  is  $C_1$ - $C_6$ -alkyl;

$R^2$  is  $C_1$ - $C_6$ -alkylthio or  $C_1$ - $C_6$ -alkylsulfonyl;

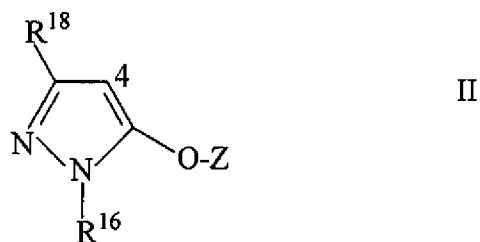
$R^3$  is hydrogen;

$R^4$  and  $R^5$  are hydrogen or  $C_1$ - $C_4$ -alkyl;

X is oxygen;

Y is  $CR^{10}R^{11}$ , wherein  $R^{10}$  and  $R^{11}$  are hydrogen or  $C_1$ - $C_4$ -alkyl;

$R^{15}$  is a pyrazole of formula II



which is linked in the 4-position, wherein

$R^{16}$  is  $C_1$ - $C_6$ -alkyl;

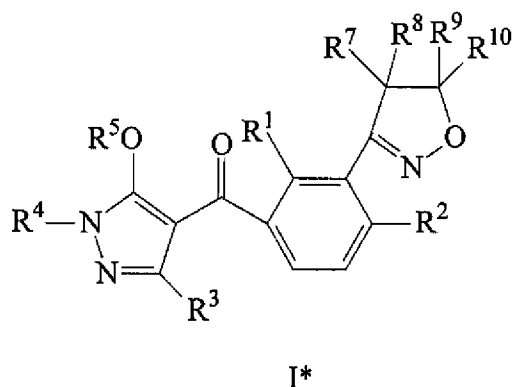
Z is hydrogen or  $SO_2R^{17}$ , wherein

$R^{17}$  is phenyl or phenyl which is partially or fully halogenated and/or has attached to it one to three of the following groups:  $C_1$ - $C_4$ -alkyl and  $C_1$ - $C_4$ -alkoxy; and

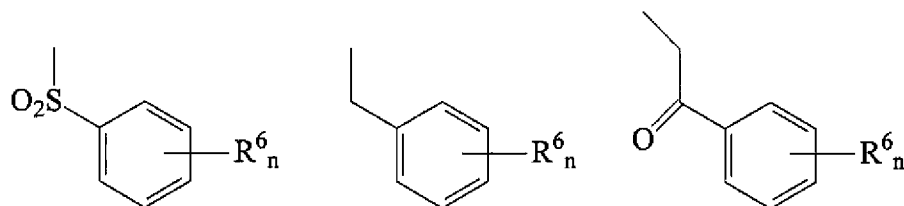
$R^{18}$  is hydrogen or  $C_1$ - $C_6$ -alkyl,

as active ingredients; or

a compound represented by the formula I\*



wherein  $R^1$  is a  $C_1$ - $C_6$  alkyl group;  $R^2$  is a  $C_1$ - $C_6$  alkylthio group or a  $C_1$ - $C_6$  alkylsulfonyl group;  $R^3$  and  $R^4$  are each independently hydrogen or a  $C_1$ - $C_6$  alkyl group;  $R^5$  is hydrogen or a group selected from the group represented by the following formula

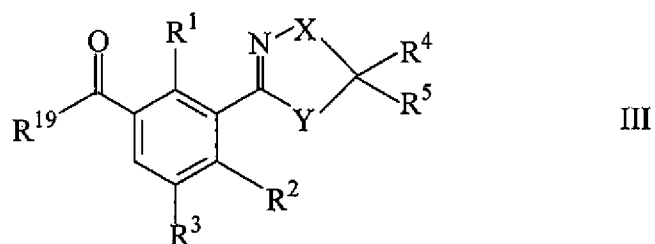


wherein  $R^6$  is halogen, a  $C_1$ - $C_6$  alkyl group or a  $C_1$ - $C_6$  alkoxy group; and  $n$  is 0, 1, 2, 3, 4 or 5;  
 $R^7$ ,  $R^8$ ,  $R^9$  and  $R^{10}$  are each independently hydrogen or a  $C_1$ - $C_6$  alkyl group; and  $R^7$  or  $R^8$  and  $R^9$  or  $R^{11}$  may form a single bond, or a salt thereof; or  
a herbicide characterized by containing one or more compounds represented by formula I\* as active ingredients.



**Count B**

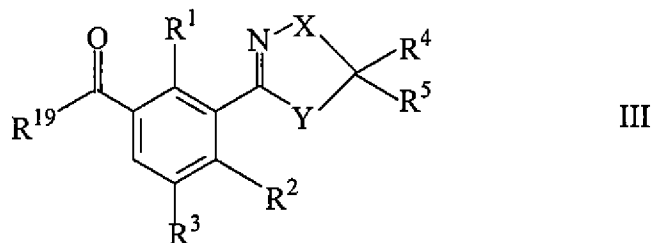
A 3-heterocyclyl-substituted benzoic acid compound of the formula III,



wherein

- $R^{19}$  is hydroxyl or a radical which can be removed by hydrolysis,  
 $R^1$  is  $C_1$ - $C_2$ -alkyl, methoxy or methylsulfonyl;  
 $R^2$  is nitro, halogen,  $C_1$ - $C_6$ -alkyl,  $C_1$ - $C_6$ -haloalkyl,  $C_1$ - $C_6$ -alkylthio,  $C_1$ - $C_6$ -alkylsulfinyl,  $C_1$ - $C_6$ -alkylsulfonyl or  $C_1$ - $C_6$ -haloalkylsulfonyl;  
 $R^3$  is hydrogen, halogen or  $C_1$ - $C_6$ -alkyl;  
 $R^4$  is hydrogen or methyl, and  $R^5$  is hydrogen;  
 $X$  is O;  
 $Y$  is  $CR^{13}R^{14}$ ;  
 $R^{13}$ ,  $R^{14}$  are hydrogen,  $C_1$ - $C_4$ -alkyl,  $C_1$ - $C_4$ -haloalkyl,  $C_1$ - $C_4$ -alkoxycarbonyl,  $C_1$ - $C_4$  haloalkoxycarbonyl or  $CONR^7R^8$ ;  
 $R^7$  is hydrogen or  $C_1$ - $C_4$ -alkyl; and  
 $R^8$  is  $C_1$ - $C_4$ -alkyl; or

a compound represented by formula III



wherein

$R^{19}$  is hydroxyl or  $C_1$ - $C_6$ -alkoxy;

$R^1$  is  $C_1$ - $C_6$ -alkyl;

$R^2$  is  $C_1$ - $C_6$ -alkylthio or  $C_1$ - $C_6$ -alkylsulfonyl;

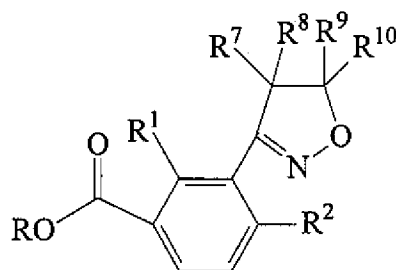
$R^3$  is hydrogen;

$R^4$  and  $R^5$  are hydrogen or  $C_1$ - $C_4$ -alkyl;

X is oxygen; and

Y is  $CR^{10}R^{11}$ , wherein  $R^{10}$  and  $R^{11}$  are hydrogen or  $C_1$ - $C_4$ -alkyl; or

a compound represented by the formula (1)



wherein  $R^1$  is a  $C_1$ - $C_6$  alkyl group;  $R^2$  is a  $C_1$ - $C_6$  alkylthio group or a  $C_1$ - $C_6$  alkylsulfonyl group and  $R^7$ ,  $R^8$ ,  $R^9$  and  $R^{10}$  are each independently hydrogen or a  $C_1$ - $C_6$  alkyl group; and  $R^7$  or  $R^8$ , and  $R^9$  or  $R^{10}$  may form a single bond; R is hydrogen or a  $C_1$ - $C_6$  alkyl group.

**Correspondence of Claims to Count A and B**

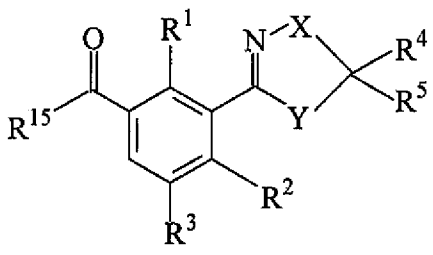
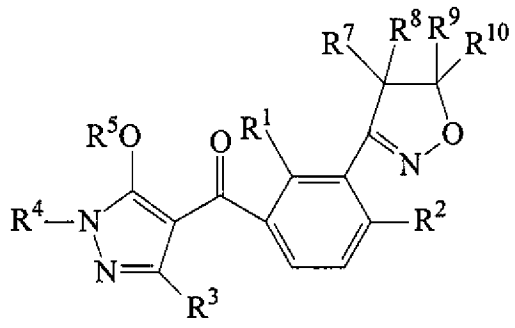
With regard to presently pending claims 28, 21, 50 and 51 of the present application, each of these claims correspond to Count A, since each of these claims is repeated identically in Count A. Regarding present claims 23, 29-39, 47 and 48, it is noted that each of these claims depends from either claim 28 or claim 21 such that all of these claims fall within the scope and correspond to the relevant portions of Count A. Claims 1 and 2 of Adachi '031 are repeated in Count A, such that these claims also clearly correspond.

Concerning Count B, pending claims 18 and 52 of the present application are each repeated identically such that there is clear correspondence between these claims and Count B. In addition, pending claims, 40-46 and 49 all ultimately depend from and fall within the scope of claim 18, such that all of these claims also correspond to Count B. Claim 3 of Adachi '031 is repeated in Count B, such that this claim also clearly corresponds.

It is believed that pending claims 17 and 22 which are directed to processes for preparing compounds of formula I, do not correspond with either Count A or Count B such that these claims do not interfere with claims 1-3 of Adachi '031.

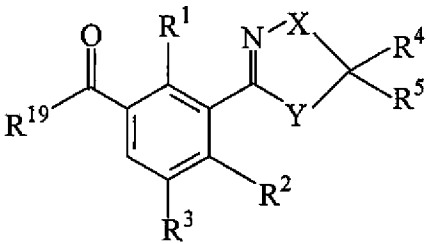
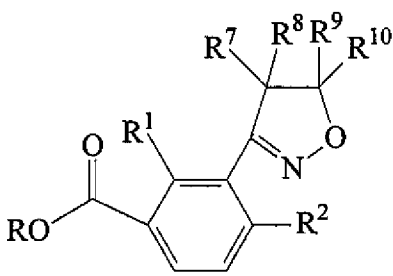
Pursuant to 37 CFR 41.202(a)(3) below are comparison claim charts which compare at least one claim of each party corresponding to each of Counts A and B. An explanation as to why the claims interfere within the meaning of 37 CFR 41.203(a) is provided after each claim chart.

**COMPARISON OF CLAIMS CORRESPONDING TO "COUNT A"**

<u>Claim 28 of '300 Application</u>	<u>Claim 1 of Adachi '301</u>
<p>A 3-heterocycl-yl-substituted benzoyl compound of the formula I</p>  <p>wherein</p>	<p>A compound represented by the formula I</p>  <p>wherein</p>
X is O;	(corresponds to oxazole ring)
R <sup>1</sup> is C <sub>1</sub> -C <sub>2</sub> -alkyl...;	R <sup>1</sup> is C <sub>1</sub> -C <sub>6</sub> alkyl group;
R <sup>2</sup> is ...C <sub>1</sub> -C <sub>6</sub> -alkylsulfonyl...;	R <sup>2</sup> is ...a C <sub>1</sub> -C <sub>6</sub> alkylsulfonyl group
R <sup>3</sup> is hydrogen...;	(phenyl ring shows hydrogen at corresponding position)
<p>R<sup>4</sup> is hydrogen... and R<sup>5</sup> is hydrogen;  Y is CR<sup>13</sup>R<sup>14</sup>;  R<sup>13</sup>, R<sup>14</sup> are hydrogen...;</p>	<p>(oxazole ring shows corresponding "Y" substituent to be -CH<sub>2</sub>- and R<sup>7</sup>, R<sup>8</sup>, R<sup>9</sup>, R<sup>10</sup> are each "independently hydrogen..." which corresponds to hydrogen for each of "R<sup>4</sup>", "R<sup>5</sup>", "R<sup>13</sup>", "R<sup>14</sup>".)</p>
<p>R<sup>15</sup> is a pyrazole of the formula II which is linked in the 4-position  <b>(formula II)</b>  wherein R<sup>16</sup> is C<sub>1</sub>-C<sub>6</sub> alkyl;  Z is H  R<sup>18</sup> is hydrogen or methyl.</p>	<p>(the pyrazole ring in formula I is linked at 4-position; R<sup>5</sup> corresponds to "Z" and may be hydrogen; R<sup>4</sup> corresponds to "R<sup>16</sup>" and may be C<sub>1</sub>-C<sub>6</sub> alkyl group; R<sup>3</sup> corresponds to "R<sup>18</sup>" and may be hydrogen or a C<sub>1</sub>-C<sub>6</sub> alkyl group.)</p>

It is clearly evident from the above comparison in the “Count A” chart that pending claim 28 of the present application and claim 1 of Adachi '301 recite formulas and the substituent definitions which significantly overlap. Thus, the subject matter of claim 28 of the present application would, if it was “prior art”, have anticipated and rendered obvious the subject matter of claim 1 of Adachi '301 since a significant subgenus of claim 28 corresponds identically with a significant subgenus of claim 1 of Adachi '301. Likewise, the subject matter of claim 1 of Adachi '301 would, if it was “prior art”, have anticipated or rendered obvious the subject matter of claim 28 of the present application in view of the fact that a significant subgenus of claim 1 of Adachi '301 corresponds identically to a significant subgenus of claim 28 of the present application.

**COMPARISON OF CLAIMS CORRESPONDING TO “COUNT B”**

<u>Claim 18 of '300 Application</u>	<u>Claim 3 of Adachi '301</u>
<p>A 3-heterocyclyl-substituted benzoyl compound of the formula III,</p>  <p>wherein R<sup>19</sup> is hydroxyl...,</p>	<p>A compound represented by the formula (1)</p>  <p>wherein R is hydrogen (corresponding to R<sup>19</sup> being hydroxyl)</p>
R <sup>1</sup> is C <sub>1</sub> -C <sub>2</sub> is alkyl...;	R <sup>1</sup> is a C <sub>1</sub> -C <sub>6</sub> alkyl group...,
R <sup>2</sup> is C <sub>1</sub> -C <sub>6</sub> -alkylthio... C <sub>1</sub> -C <sub>6</sub> -alkylsulfonyl,...	R <sup>2</sup> is a C <sub>1</sub> -C <sub>6</sub> alkylthio group or a C <sub>1</sub> -C <sub>6</sub> alkylsulfonyl group
R <sup>3</sup> is hydrogen...;	(phenyl ring of formula I includes hydrogen at the corresponding “R <sup>3</sup> ” position)
<p>R<sub>4</sub> is hydrogen... and R<sub>5</sub> is hydrogen; X is O; Y is CR<sup>13</sup>R<sup>14</sup>; R<sup>13</sup>, R<sup>14</sup> are hydrogen...</p>	<p>(oxazole ring and formula (I) corresponds to definitions for “X” and “Y”; R<sup>7</sup>, R<sup>8</sup>, R<sup>9</sup>, R<sup>10</sup> are each independently hydrogen corresponding to )</p>

It is clearly evident from the comparison above in the “Count B” chart that pending claim 18 of the present application and claim 3 of Adachi '301 recite formulas and the substituent definitions which significantly overlap. Thus, the subject matter of claim 18 of the present application would, if it was “prior art”, have anticipated and rendered obvious the subject matter of claim 3 of Adachi '301 since a significant subgenus of claim 18 corresponds identically with a significant

subgenus of claim 3 of Adachi '301. Likewise, the subject matter of claim 3 of Adachi '301 would, if it was "prior art", have anticipated or rendered obvious the subject matter of claim 18 of the present application in view of the fact that a significant subgenus of claim 3 of Adachi '301 corresponds identically to a significant subgenus of claim 18 of the present application.

**Reasons Why Applicant Will Prevail on Priority**

Pursuant to 37 CFR 41.202(a)(4), it is submitted that Applicant will prevail on priority in an Interference with the Adachi '301 patent, since the earliest effective priority date for the present application is January 17, 1997 which is more than ten months earlier than the earliest possible priority date of Adachi '301 which is October 30, 1997. Regarding the present application, it is noted that German Priority Application No. 197 01 446.1 was filed in Germany on January 17, 1997 followed by the filing of International PCT Application No. PCT/EP98/00069 on January 8, 1998 (which published as WO 98/31681). Adachi '301 is based on International PCT Application No. PCT/JP98/04898 filed October 29, 1998 which claims priority to Japanese Application No. 9-299208 filed in Japan on October 30, 1997. In view of the fact that the earliest possible constructive reduction to practice date of the present application is more than ten months earlier than that of Adachi '301, it is submitted that upon verifying the present application is entitled to this earliest possible constructive reduction date, the present application should prevail based on priority against Adachi '301 even if Adachi '301, is entitled to its earliest constructive reduction practice date. Clear evidence in support of a constructive reduction to practice date of January 17, 1997 for the present application is provided below.

**Claim Chart showing Written Description for Each Claim in Specification**

Pursuant to 37 CFR 41.202(a)(5), it is submitted that with respect to proposed Count A (i.e. final product compounds and compositions containing the final product compounds), claims 47, 48, 50 and 51 were added with the filing of an RCE on May 11, 2001 in order to provoke an Interference. Support for the written description of each of these claims is shown in Chart I below. With respect to Count B (i.e. intermediate compounds), claims 49 and 52 were added with RCE in order to provoke an Interference. Support for the written description of each of

these claims is shown in Chart II below.

### CLAIM CHART I

#### Written Description Support for Claims 47, 48, 50 and 51

##### Claim 47

<u>Claim 47</u>	<u>Support in Specification</u>
<p>The 3-heterocyclyl-benzoyl compound of ...formula I...</p> <div style="text-align: center;"> <p style="margin-top: 10px;">I</p> </div>	<p>Page 1, lines 7-15</p>
<p>X is O</p>	<p>Page 2, line 21</p>
<p>R<sup>1</sup> is C<sub>1</sub>-C<sub>2</sub>-alkyl;</p>	<p>Page 1, line 19</p>
<p>R<sup>2</sup> is C<sub>1</sub>-C<sub>6</sub>-alkylthio or C<sub>1</sub>-C<sub>6</sub>-alkylsulfonyl;</p>	<p>Page 1, lines 19-24</p>
<p>R<sup>3</sup> is hydrogen;</p>	<p>Page 1, line 26</p>
<p>Y is CR<sup>13</sup>R<sup>14</sup>; and R<sup>13</sup>, R<sup>14</sup> are hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl.</p>	<p>Page 2, line 23 and line 27</p>
<p>R<sup>15</sup> is a pyrazole of formula II</p> <div style="text-align: center;"> <p style="margin-top: 10px;">II</p> </div>	<p>Page 3, lines 1-5</p>



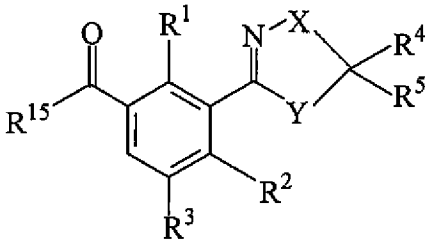
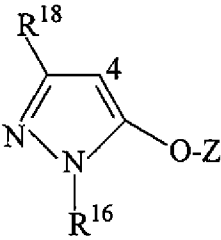
**CLAIM CHART I (continued)****Written Description Support for Claim 47 (continued)**

<u>Claim 47</u>	<u>Support in Specification</u>
	Also note the group of exemplified compounds represented by formula Ib23 at page 42, lines 8-18 in combination with Table 2 beginning at page 33, line 35. Specifically note Example No. Ib23.105 based on formula Ib23 and Table 2 at page 36, line 4 wherein an example of each of the substituents is exemplified.

**Written Description Support for Claim 48**

Support for the composition recited in Claim 48 is based on all of the above-noted disclosures indicated with respect to claim 47, and is additionally found at page 4, lines 17-21 of the specification which specifically discloses that the compounds may be formulated into herbicidal compositions.

**CLAIM CHART I (continued)****Written Description Support for Claim 50**

<u>Claim 50</u>	<u>Support in Specification</u>
<p>A compound represented by formula I</p>  <p style="text-align: right;">I</p>	<p>Page 1, lines 7-15</p>
<p>R<sup>1</sup> is C<sub>1</sub>-C<sub>6</sub>-alkyl;</p>	<p>Page 1, line 19</p>
<p>R<sup>2</sup> is C<sub>1</sub>-C<sub>6</sub>-alkylthio or C<sub>1</sub>-C<sub>6</sub>-alkylsulfonyl;</p>	<p>Page 1, lines 19-24</p>
<p>R<sup>3</sup> is hydrogen;</p>	<p>Page 1, line 26</p>
<p>R<sup>4</sup> and R<sup>5</sup> are hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;</p>	<p>Page 1, line 28</p>
<p>X is oxygen;</p>	<p>Page 2, line 21</p>
<p>Y is CR<sup>10</sup>R<sup>11</sup>, wherein R<sup>10</sup> and R<sup>11</sup> are hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;</p>	<p>Page 2, lines 23 and 27</p>
<p>R<sup>15</sup> is a pyrazole of formula II</p>  <p style="text-align: right;">II</p> <p>which is linked in the 4-position</p> <p>R<sup>16</sup> is C<sub>1</sub>-C<sub>6</sub>-alkyl;</p>	<p>Page 2, line 40 to Page 3, line 11</p>

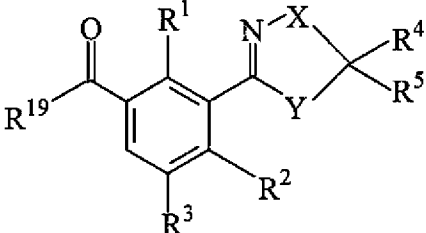
**CLAIM CHART I (continued)****Written Description Support for Claim 50 (continued)**

Z is hydrogen or SO <sub>2</sub> R <sup>17</sup> , wherein R <sup>17</sup> is phenyl or phenyl which is partially or fully halogenated and/or has attached to it one to three of the following groups: C <sub>1</sub> -C <sub>4</sub> -alkyl and C <sub>1</sub> -C <sub>4</sub> -alkoxy; and	Page 3, lines 13-20
R <sup>18</sup> is hydrogen or C <sub>1</sub> -C <sub>6</sub> -alkyl, as active ingredients.	Page 3, line 22
	Also note the group of exemplified compounds represented by formula Ib23 at page 42, lines 8-18 in combination with Table 2 beginning at page 33, line 35. Specifically note Example No. Ib23.105 based on formula Ib23 and Table 2 at page 36, line 4 wherein an example of each of the substituents is exemplified.

**Written Description Support for Claim 51**

Support for the composition recited in Claim 51 is based on all of the above-noted disclosures indicated with respect to claim 50, and is additionally found at page 4, lines 17-21 of the specification which specifically discloses that the compounds may be formulated into herbicidal compositions.

**CLAIM CHART II****Written Description Support for Claims 49 and 50****Claim 49**

<u>Claim 49</u>	<u>Support in Specification</u>
<p>The 3-heterocyclyl-substituted benzoic acid compound of formula III</p>  <p style="text-align: right;">III</p>	<p>Page 110, lines 23-30</p>
X is O;	Page 111, line 36
R <sup>1</sup> is C <sub>1</sub> -C <sub>2</sub> -alkyl;	Page 110, line 35
R <sup>2</sup> is C <sub>1</sub> -C <sub>6</sub> -alkylthio or C <sub>1</sub> -C <sub>6</sub> -alkylsulfonyl;	Page 110, lines 35-39
R <sup>3</sup> is hydrogen;	Page 110, line 41
Y is CR <sup>13</sup> R <sup>14</sup> ; and R <sup>13</sup> , R <sup>14</sup> are hydrogen or C <sub>1</sub> -C <sub>4</sub> -alkyl.	Page 111, lines 38 and 43
R <sup>19</sup> is hydroxyl or a radical which can be removed by hydrolysis,	Page 112, lines 7-8

**Written Description Support for Claim 52**

Written description support for claim 52 is identical to that of claim 49 as indicated above, except for the variable “R<sup>19</sup>” which is hydroxyl or C<sub>1</sub>-C<sub>6</sub>-alkoxy. This definition for R<sup>19</sup> is found at page 115, line 14 of the specification.

**Constructive Reduction to Practice Claim Chart**

Pursuant to 37 CFR 41.203(a)(6), it is submitted that all of the presently pending claims of the present application are fully supported by the disclosure of the German Priority Application so as to satisfy “written description” requirements and so as to be entitled to a constructive reduction to practice date corresponding to the filing date of the priority application of January 17, 1997. This is evident from a review of the “Constructive Reduction to Practice Claim Chart” below. Note that references to the German Priority Application refer to the English translation thereof which is being submitted together with this Letter.

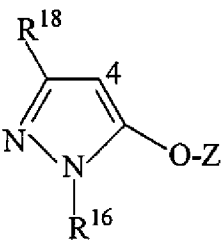
## Constructive Reduction to Practice Claim Chart

German Priority Application No. 197 01 446.1

Written Description Support for Claim 28

<u>Claim 28</u>	<u>Support in German Application</u>
<p>A 3-heterocyclyl-substituted benzoyl compound of formula I</p> <div style="text-align: center;"> <p style="text-align: right;">I</p> </div>	Page 1, lines 1-15
X is O;	Page 2, line 21
R <sup>1</sup> is C <sub>1</sub> -C <sub>2</sub> -alkyl, methoxy or methylsulfonyl;	Page 1, lines 19-24
R <sup>2</sup> is nitro, halogen, C <sub>1</sub> -C <sub>6</sub> -alkyl, C <sub>1</sub> -C <sub>6</sub> -haloalkyl, C <sub>1</sub> -C <sub>6</sub> -alkylthio, C <sub>1</sub> -C <sub>6</sub> -alkylsulfinyl, C <sub>1</sub> -C <sub>6</sub> -alkylsulfonyl or C <sub>1</sub> -C <sub>6</sub> -haloalkylsulfonyl;	Page 1, lines 19-24
R <sup>3</sup> is hydrogen, halogen or C <sub>1</sub> -C <sub>6</sub> -alkyl;	Page 1, line 25
R <sup>4</sup> is hydrogen or methyl, and R <sup>5</sup> is hydrogen;	Page 1, line 28
<p>Y is CR<sup>13</sup>R<sup>14</sup>;</p> <p>R<sup>13</sup>, R<sup>14</sup> are hydrogen, C<sub>1</sub>-C<sub>4</sub>-alkyl, C<sub>1</sub>-C<sub>4</sub>-haloalkyl, C<sub>1</sub>-C<sub>4</sub>-alkoxycarbonyl, C<sub>1</sub>-C<sub>4</sub>-haloalkoxycarbonyl or CONR<sup>7</sup>R<sup>8</sup>;</p> <p>R<sup>7</sup> is hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;</p> <p>R<sup>8</sup> is C<sub>1</sub>-C<sub>4</sub>-alkyl;</p>	Page 2, lines 17-19, 24 and 28-30

**Constructive Reduction to Practice Claim Chart (continued)****Written Description Support for Claim 28 (continued)**

<u>Claim 28</u>	<u>Support in German Application</u>
<p>R<sup>15</sup> is a pyrazole of the formula II which is linked in the 4-position</p> <div data-bbox="186 598 649 840">  <p style="text-align: center;">II</p> </div> <p>wherein</p> <p>R<sup>16</sup> is C<sub>1</sub>-C<sub>6</sub>-alkyl;</p> <p>Z is H; and</p> <p>R<sup>18</sup> is hydrogen or methyl.</p>	<p>Page 2, line 41 to Page 3, line 14; and Page3, line 22</p>

**Support for Claim 21**

Claim 21 recites a herbicidal composition including the compounds of claim 28, such that claim 21 is identically supported based on the above-identified portions corresponding to claim 28, as well as page 8, lines 36-42 of the German Priority Application.

**Support for Claim 23**

Claim 23 is directed to a method of controlling undesirable vegetation which employs the compounds of claim 28, such that support for claim 23 is found in the identically disclosed portions corresponding to claim 28, as well as at page 9, lines 5-11 of the German Priority Application.

**Support for Claim 29**

Claim 29 is directed to compounds of formula I defined in claim 28 wherein R<sup>1</sup> is methyl, R<sup>2</sup> is methylsulfonyl, R<sup>3</sup> is hydrogen, R<sup>16</sup> is methyl and R<sup>18</sup> is hydrogen. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28.

Support for this subgenus is found in formula Ib23 at page 39, lines 8-18 of the German Priority Application.

**Support for Claim 30**

Support for this compound is based on the combination of formula Ib 23 at page 39, lines 8-18 and the exemplified structures corresponding to Table 2 at pages 30-33. Specifically, Example Ib23.105 in the German Priority Application supports this claim.

**Support for Claim 31**

Claim 31 is directed to compounds of formula I defined in claim 28 wherein R<sup>1</sup> is methyl, R<sup>2</sup> is methylsulfonyl, R<sup>3</sup> is hydrogen, R<sup>16</sup> is ethyl and R<sup>18</sup> is methyl. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28.

Support for this subgenus is found in formula Ib42 at page 43, lines 40 to 44, page line 7 of the German Priority Application.

**Support for Claim 34**

Claim 34 is directed to compounds of formula I defined in claim 28 wherein R<sup>1</sup> is methyl, R<sup>2</sup> is methylsulfonyl, R<sup>3</sup> is hydrogen, R<sup>16</sup> is methyl and R<sup>18</sup> is methyl. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28.

Support for this subgenus is found in formula Ib3 at page 34, lines 13-23 of the German Priority Application.

**Support for Claim 35**

Claim 35 is directed to compounds defined in claim 28 wherein R<sup>4</sup> is hydrogen. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28. Support for claim 35 is found at page 5, lines 38-41 of the German Priority Application.



**Support for Claim 36**

Claim 36 is directed to compounds defined in claim 36 wherein R<sup>1</sup> is methyl. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28. Examples of subgeneric formulas of preferred compounds wherein R<sup>1</sup> is methyl include, for example: formula Ib3 (page 34, lines 13-18); formulas Ib16-Ib20 (at page 37, line 19 to page 38, line 29); formula Ib23 (page 39, lines 8-18); and formulas Ib36-Ib40 (at page 42, lines 19 to page 43, line 29).

**Support for Claim 37**

Claim 37 is directed to compounds defined in claim 35 (R<sup>4</sup> is hydrogen) which in turn depends on claim 28, wherein R<sup>1</sup> is methyl. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28. Examples of compounds wherein R<sup>1</sup> is methyl may be found within formula Ib23 (page 39, lines 8-18) in combination with Table 2 at pages 30-33. Specifically, note Example Ib23.105. Further, formulas Ib36-Ib40 at page 42, line 20 to page 43, line 29 also include Ib36.105, Ib37.105, Ib38.105, Ib39.105 and Ib40.105.

**Support for Claim 38**

Claim 38 is directed to compounds defined in claim 35 (R<sup>4</sup> is hydrogen) which in turn depends on claim 28. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28. Claim 38 further defines that R<sup>1</sup> is methyl, R<sup>2</sup> is methylsulfonyl, R<sup>3</sup> is hydrogen, R<sup>16</sup> is ethyl and R<sup>18</sup> is hydrogen. Formula Ib42 (page 43, lines 40 to page 44, line 7) in combination with Table 2 at pages 30-33 includes Example Ib42.105 which supports this claim.

**Support for Claim 39**

Claim 39 is directed to compounds defined in claim 35 (R<sup>4</sup> is hydrogen) which in turn depends on claim 28. Support for the scope of this claim corresponding to that of claim 28 is identified in the section addressing claim 28. Claim 39 further defines that R<sup>1</sup> is methyl, R<sup>2</sup> is methylsulfonyl, R<sup>3</sup> is hydrogen, R<sup>16</sup> is ethyl and R<sup>18</sup> is hydrogen. Formula Ib3 (page 34, lines 13-23) in

combination with Table 2 at pages 30-33 includes Example Ib3.105 which supports this claim.

**Support for Claim 18**

<p><u>Claim 18</u></p> <p>A 3-heterocyclyl-substituted benzoic acid compound of the formula III,</p> <div data-bbox="181 514 609 751"> </div> <p style="text-align: right;">III</p> <p>wherein</p>	<p><u>Support in German Application</u></p> <p>Page 105, lines 21-30</p>
<p>R<sup>19</sup> is hydroxyl or a radical which can be removed by hydrolysis,</p>	<p>Page 107, lines 7-8</p>
<p>R<sup>1</sup> is C<sub>1</sub>-C<sub>2</sub>-alkyl, methoxy or methylsulfonyl;</p>	<p>Page 105, lines 35-38</p>
<p>R<sup>2</sup> is nitro, halogen, C<sub>1</sub>-C<sub>6</sub>-alkyl, C<sub>1</sub>-C<sub>6</sub>-haloalkyl, C<sub>1</sub>-C<sub>6</sub>-alkylthio, C<sub>1</sub>-C<sub>6</sub>-alkylsulfinyl, C<sub>1</sub>-C<sub>6</sub>-alkylsulfonyl or C<sub>1</sub>-C<sub>6</sub>-haloalkylsulfonyl;</p>	<p>Page 105, lines 35-39</p>
<p>R<sup>3</sup> is hydrogen, halogen or C<sub>1</sub>-C<sub>6</sub>-alkyl;</p>	<p>Page 105, line 41</p>
<p>R<sup>4</sup> is hydrogen or methyl, and R<sup>5</sup> is hydrogen;</p>	<p>Page 105, line 44</p>
<p>X is O;</p>	<p>Page 106, line 35</p>
<p>Y is CR<sup>13</sup>R<sup>14</sup>;  R<sup>13</sup>, R<sup>14</sup> are hydrogen, C<sub>1</sub>-C<sub>4</sub>-alkyl, C<sub>1</sub>-C<sub>4</sub>-haloalkyl, C<sub>1</sub>-C<sub>4</sub>-alkoxycarbonyl, C<sub>1</sub>-C<sub>4</sub>-haloalkoxycarbonyl or CONR<sup>7</sup>R<sup>8</sup>;  R<sup>7</sup> is hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;  R<sup>8</sup> is C<sub>1</sub>-C<sub>4</sub>-alkyl.</p>	<p>Page 106, lines 31-33, 37 and 42-43</p>

**Support for Claim 20**

Claim 20 is directed to the intermediate compounds of formula III defined in claim 18, wherein  $R^{19}$  is halogen, hydroxyl or  $C_1$ - $C_6$ -alkoxy. Support for all formula variables other than  $R^{19}$  is found in the identified portions above described with regard to claim 18. Support for thus  $R^{19}$  definition is found in formulas III $\alpha$ ', III $\beta$  and III $\gamma$  at page 107, line 20 to page 108, line 29 of the German Priority Application.

**Support for Claim 40**

Claim 40 is directed to intermediate compounds defined in claim 18, wherein  $R^4$  is hydrogen. Support for the scope of claim 40 defined by claim 18 is identified above in connection with the description of claim 18. Support for  $R^4$  being hydrogen is found at page 105, line 43 of the German Priority Application.

**Support for Claim 41**

Claim 41 is directed to intermediate compounds defined in claim 18, wherein  $R^1$  is methyl. Support for the scope of claim 41 defined by claim 18 is identified above in connection with the description of claim 18. Support for  $R^1$  being methyl is found at page 105, line 35 of the German Priority Application.

**Support for Claim 42**

Claim 42 depends from claim 40 ( $R^4$  is hydrogen) which in turn depends from claim 18. The scope of claim 42 corresponding to that of claim 18 and claim 40 is support as described in connection with these claims above. In addition, support for  $R^1$  being methyl is found at page 105, line 35 of the German Priority Application.

**Support for Claim 43**

Claim 43 is directed to intermediate compounds defined in claim 20 ( $R^{19}$  is halogen, hydroxyl or  $R^1$ - $R^6$ -alkoxy) which in turn depends on claim 18. Support for the scope of claim 43 corresponding to claim 18 and 20 is described above in connection with these claims. Support

for R<sup>4</sup> being hydrogen is found at page 105, line 44 of the German Priority Application.

**Support for Claim 44**

Claim 44 is directed to intermediate compounds defined in claim 20 (R<sup>1</sup> is methyl, hydroxyl or R<sup>1</sup>-R<sup>6</sup>-methyl) which in turn depends on claim 18. Support for the scope of claim 44 corresponding to claim 18 and 20 is described above in connection with these claims. Support for R<sup>4</sup> being hydrogen is found at page 105, line 44 of the German Priority Application.

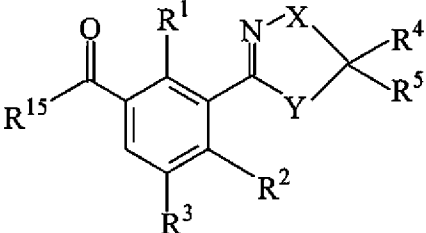
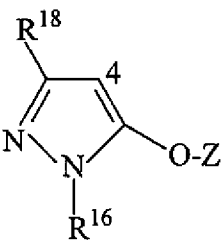
**Support for Claim 45**

Claim 45 is directed to intermediate compounds defined in claim 43 (R<sup>4</sup> is hydrogen) which in turn depends upon claim 20 (R<sup>19</sup> is halogen, hydroxyl or C<sub>1</sub>-C<sub>6</sub>-alkoxy) which in turn depends upon claim 18. The scope of claim 45 corresponding to that of claims 43, 20 and 18 is described above in connection with each of these claims. Support for R<sup>1</sup> being methyl is found at page 105, line 35 of the German Priority Application.

**Support for Claim 46**

Claim 46 is directed to intermediate compounds defined in claim 45 (R<sup>1</sup> is methyl) which in turn depends upon claim 43 (R<sup>4</sup> is hydrogen) which in turn depends upon claim 20 (R<sup>19</sup> is halogen, hydroxyl or C<sub>1</sub>-C<sub>6</sub>-alkoxy) which in turn depends upon claim 18. The scope of claim 46 corresponding to the scope of each of these claims is described above in connection with the each of these claims. In addition, support for R<sup>2</sup> being methylsulfonyl and R<sup>3</sup> being hydrogen is found at page 105, line 35-41 of the German Priority Application.

**Support for Claim 47**

<u>Claim 47</u>	<u>Support in German Application</u>
<p>The 3-heterocyclyl-substituted benzoyl compound of the formula I</p>  <p style="text-align: right;">I</p>	<p>Page 1, lines 4-15</p>
X is O	Page 2, line 21
R <sup>1</sup> is C <sub>1</sub> -C <sub>2</sub> -alkyl;	Page 1, line 19
R <sup>2</sup> is C <sub>1</sub> -C <sub>6</sub> -alkylthio or C <sub>1</sub> -C <sub>6</sub> -alkylsulfonyl;	Page 1, lines 19-24
R <sup>3</sup> is hydrogen;	Page 1, line 26
Y is CR <sup>13</sup> R <sup>14</sup> ; and R <sup>13</sup> , R <sup>14</sup> are hydrogen or C <sub>1</sub> -C <sub>4</sub> -alkyl;	Page 2, lines 24 and 29
<p>R<sup>15</sup> is a pyrazole of the formula II</p>  <p style="text-align: right;">II</p> <p>wherein</p> <p>R<sup>16</sup> is C<sub>1</sub>-C<sub>6</sub>-alkyl;</p> <p>Z is H; and</p> <p>R<sup>18</sup> is hydrogen or methyl.</p>	<p>Page 2, line 41 to Page 3, line 13; and Page 3, line 23</p>

Claim 47 is also supported by formula Ib23 at page 39, lines 8-18 as well as Example Ib23.105

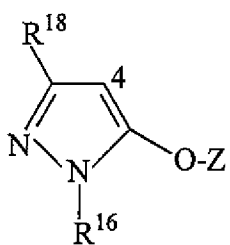
### Support for Claim 48

### Support for Claim 49

### Support for Claim 50

<p align="center"><u>Claim 50</u></p> <p>A compound represented by formula I</p> <div align="center"> <p align="right">I</p> </div> <p>wherein</p>	<p align="center"><u>Support in German Application</u></p> <p align="center">Page 1, lines 4-15</p>
<p>R<sup>1</sup> is C<sub>1</sub>-C<sub>6</sub>-alkyl;</p>	<p align="center">Page 1, line 19</p>
<p>R<sup>2</sup> is C<sub>1</sub>-C<sub>6</sub>-alkylthio or C<sub>1</sub>-C<sub>6</sub>-alkylsulfonyl;</p>	<p align="center">Page 1, lines 19-24</p>
<p>R<sup>3</sup> is hydrogen;</p>	<p align="center">Page 1, line 26</p>
<p>R<sup>4</sup> and R<sup>5</sup> are hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;</p>	<p align="center">Page 1, line 28</p>
<p>X is oxygen CR<sup>13</sup>R<sup>14</sup>, wherein R<sup>13</sup> and R<sup>14</sup> are hydrogen or C<sub>1</sub>-C<sub>4</sub>-alkyl;</p>	<p align="center">Page 2, line 21</p>

**Support for Claim 50 (continued)**

Y is CR <sup>13</sup> R <sup>14</sup> , wherein R <sup>13</sup> and R <sup>14</sup> are hydrogen or C <sub>1</sub> -C <sub>4</sub> -alkyl;	Page 2, line 24 and 29
R <sup>15</sup> is a pyrazole of formula II  which is linked in the 4-position, wherein R <sup>16</sup> is C <sub>1</sub> -C <sub>6</sub> -alkyl;	Page 2, line 41 to Page 3, line 10
Z is hydrogen or SO <sub>2</sub> R <sup>17</sup> , wherein R <sup>17</sup> is phenyl or phenyl which is partially or fully halogenated and/or has attached to it one to three of the following groups: C <sub>1</sub> -C <sub>4</sub> -alkyl and C <sub>1</sub> -C <sub>4</sub> -alkoxy; and	Page 3, lines 13-20
R <sup>18</sup> is hydrogen or C <sub>1</sub> -C <sub>6</sub> -alkyl.	Page 3, line 22

**Support for Claim 51**

Claim 51 is directed to a herbicide containing the compounds which correspond to those recited in claim 50. Written description support in the German Priority Application for claim 51 is identical to that of claim 50 with the additional reference to a herbicidal composition at page 8, lines 36-42.

**Support for Claim 52**

<u>Claim 52</u> A compound represented by formula III	<u>Support in Specification</u> Page 105, lines 20-30
<div data-bbox="181 527 609 768" data-label="Chemical-Block"> </div> <div data-bbox="787 625 824 657" data-label="Text"> <p>III</p> </div> <p>wherein</p>	
R <sup>19</sup> is hydroxyl or C <sub>1</sub> -C <sub>6</sub> -alkoxy;	Page 107, lines 8-9
R <sup>1</sup> is C <sub>1</sub> -C <sub>6</sub> -alkyl;	Page 105, line 35
R <sup>2</sup> is C <sub>1</sub> -C <sub>6</sub> -alkylthio or C <sub>1</sub> -C <sub>6</sub> -alkylsulfonyl;	Page 105, lines 35-38
R <sup>3</sup> is hydrogen;	Page 105, line 41
R <sup>4</sup> and R <sup>5</sup> are hydrogen or C <sub>1</sub> -C <sub>4</sub> -alkyl;	Page 105, line 44
X is oxygen; and	Page 106, line 35
Y is CR <sup>10</sup> R <sup>11</sup> , wherein R <sup>10</sup> and R <sup>11</sup> are hydrogen or C <sub>1</sub> -C <sub>4</sub> -alkyl.	Page 106, lines 38 and 42



**Conclusion**


In view of the above, it is respectfully submitted that all of the presently pending claims are entitled to the full benefit of priority based on the German Priority Application No. 197 01 446.1 filed in Germany on January 17, 1997.

It is respectfully requested that an Interference be declared between the present application and the Adachi '031 patent, since the provisions of 37 C.F.R. 42.202(a)(10)-(6) have been satisfied. It is noted that an English translation of German Priority Application No. 197 01 446.1 is being filed together with this letter.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

Respectfully submitted,

Dated: August 15, 2008

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